Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

FRONTIER COMMUNICATIONS CORPORATION

**PETITION FOR WAIVER
OF SECTIONS 54.313(a)(10) AND 54.318(i) OF THE COMMISSION'S RULES
OR FOR RULEMAKING TO MODIFY SECTION 54.318(i)
OF THE COMMISSION'S RULES**

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December 7, 2012

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Frontier Communications Corporation ("Frontier") hereby seeks a waiver of the method by which the Commission determines if an incumbent local exchange carrier ("ILEC") has met the rate floor requirements as set forth in the Commission's rule section 54.318(i),[1] and as modified in the Commission's *Third Order on Reconsideration*,[2] as well as a waiver of the rate comparability reporting requirements set forth in the Commission's rule section 54.313(a)(10)[3] based on each of Frontier's individual local service plans in West Virginia. In the alternative, Frontier seeks a temporary waiver of rule sections 54.313(a)(10) and 54.318(i) and petitions the Commission to initiate a rulemaking that will provide an additional method in its rule sections 54.313 and 54.318(i) for establishing local rates above the rate floor and assessing rate comparability when a carrier's customers may select from optional service plans with varying rate structures. Good cause exists for the requested waivers or rule modifications.

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1 *See* 47 C.F.R. § 54.318(i).

2 *See Connect America Fund*, Third Order on Reconsideration, 27 FCC Rcd 5622 (2012) ("*Third Order on Reconsideration*").

3 *See* 47 C.F.R. § 54.313(a)(10).

I. BACKGROUND

The Commission's urban rate floor was set at $10 in 2012 and rises to $14 in 2013.[4] Under current rules, high-cost support will be reduced dollar-for-dollar to the extent that an ILEC's local rates are below the applicable rate floor.[5] In its *Third Order on Reconsideration*, the Commission held that when local measured service rates are part of state rate plans, the local service rate reported by an ILEC "should reflect the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit."[6] This statement implies that *each* rate plan offered by any ILEC in a particular state must be above the urban rate floor established by the Commission or else that ILEC's high-cost support in that state will be reduced.

Frontier filed comments in response to the inquiry from the Wireline Competition Bureau ("Bureau") regarding the proposed annual urban rate survey and issues relating to reasonable comparability benchmarks and the local rate floor.[7] In its comments Frontier explained how it expects the application of the Commission's rate floor requirement, specifically applying the urban rate floor to the rates of individual service plans, for the July 1, 2013 through June 30, 2014 period will cause Frontier to lose approximately $1.5 million in high-cost universal service

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4 After July 1, 2014, the Commission expects the rate floor to be the "national average urban rate" as determined by an annual rate survey conducted by the Wireline Competition Bureau. *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 243 (2011) ("*USF/ICC Transformation Order*"). The most recent national average urban rate, established in 2008, was $15.62 a month. *See id*., ¶¶ 236 and 243 and note 380.

5 *See* 54 C.F.R. § 54.318(b).

6 *Third Order on Reconsideration*, ¶ 22 (footnote omitted).

7 *See* Public Notice, "Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor," WC Docket No. 10-90, DA 12-1199 (rel. July 26, 2012) ("Public Notice").

support in West Virginia.[8] This loss of support would be triggered because Frontier's $7 measured service Plan 1,[9] even with an average of over $3 per month in per-minute charges, is well below the established $14 rate floor.[10] Frontier anticipates that the amount of the expected loss in high-cost support may increase in subsequent years if the rate floor increases such that certain other lower rate tiers offered in West Virginia may no longer meet the prescribed rate floor.[11]

Enforcing the subject rules and causing Frontier to bear these anticipated losses in high-cost support would not serve the purpose of the rule, which is to ensure that "federal high-cost support [is not used] to subsidize local rates beyond what is necessary to ensure reasonable comparability of rates," and "to ensure that states are contributing to support and advance universal service."[12] In other words, the purpose of the rate floor is to ensure that ratepayers in high-cost areas pay a certain minimum amount in rates to support their own network before they receive federal universal service support contributed from other ratepayers around the country. Frontier's current rates in West Virginia fully meet the purpose of the rule. The average revenue produced by West Virginia basic local rates is almost $25 per month,[13] which is well above the 2013 $14 rate floor requirement and importantly is over 50% higher than the most recently

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8 *See Connect America Fund*, Comments of Frontier Communications Corporation, WC Docket No. 10-90 at 6 (filed Sept. 28, 2012) ("Frontier Comments"). *See also* Letter from Michael D. Saperstein, Director of Federal Regulatory Affairs, Frontier Communication, to Marlene H. Dortch, FCC Secretary, in WC Docket No. 10-90 *et al.,* at 1 (filed Nov. 5, 2012) ("Frontier Letter") ("each individual plan would have to be measured against the rate floor, instead of accounting for the average revenue per line produced by all calling plans").

9 Frontier offers four optional service plans in West Virginia, "ranging from a $7 monthly-recurring charge for a measured service plan in which all calls are charged based on distance, time of day and length of call, to a $29 unlimited flat-rate plan in which all calls are included in the monthly flat-rate." Frontier Comments at 4.

10 *See* Frontier Comments at 6.

11 *See* Frontier Comments at 6. Frontier's $15.50 per month Plan 2 is a combination of flat rate service and measured service to exchanges outside the caller's home exchange. *See* Frontier Comments, Attachment A, at 11.

12 *ICC-USF Transformation Order*, ¶¶ 237-238.

13 *See* Frontier Comments at 5.

published national urban rate.[14] Moreover, Frontier's most popular calling plan in West Virginia – Plan 4 at $29 per month[15] – is double the rate floor and well above the national average urban rate.[16]

When the federal subscriber line charge ("SLC") is added to Frontier's Plan 4 rate in West Virginia, the total exceeds the $30 residential rate ceiling established by the Commission in the *USF/ICC Transformation Order*[17] and prevents the company from imposing an Access Recovery Charge ("ARC") on West Virginia residential customers.[18] Without an ARC in West Virginia, Frontier will have even less support for service in West Virginia's rural, high-cost areas.

II. GRANT OF THE REQUESTED WAIVERS IS JUSTIFIED AND WOULD SERVE THE PUBLIC INTEREST

The Commission may waive its rules for good cause shown, where special circumstances warrant a deviation from the rule, and strict compliance with the rule would be inconsistent with the public interest.[19] Good cause is shown here to waive the requirement in rule section 54.318(i) that the rates of Frontier's lowest tier Plan 1 service offering in West Virginia, or any other individual service plan it offers in West Virginia, meet the rate floor, provided Frontier demonstrates that it meets the rate floor requirement using a weighted average of all its local rates in the state. Similarly, good cause exists to waive the requirement in rule section 54.313(a)(10) that Frontier certify the rates of each of its four service plans are within two

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[14] Frontier Comments at 8.

[15] *See* Frontier Comments, Attachment A, at 11.

[16] Frontier Comments at 5-6.

[17] *See USF/ICC Transformation Order*, ¶¶ 36, 852, 913-14 and 47 C.F.R. § 51.915(b)(12).

[18] *See* Frontier Comments at 8.

[19] 47 C.F.R. §1.3. *See generally Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

standard deviations of the applicable national average urban rate for voice service, provided Frontier demonstrates compliance with the rate comparability requirement using a weighted average of all its local rates in the state.

A. Frontier's West Virginia Local Rate Plans Present Unique Circumstances Justifying Waiver of the Subject Rules

The urban rate floor as crafted in the current rule does not account for the unique circumstances found in West Virginia where Frontier offers local service through multiple optional calling plans. Without a waiver of the rules, each optional calling plan must be compared individually to the rate floor. Beginning in 2013 Frontier will lose a significant portion of its high-cost support in West Virginia because one of its calling plans is offered at a rate that is below the rate floor, even though only 13% of its West Virginia customers subscribe to this calling plan.[20] Importantly, 87% of Frontier's customers in West Virginia subscribe to one of the three other calling plans offered there, each of which has rates above the rate floor.[21] Moreover, the average monthly revenue per line produced by all four calling plans is approximately $25 and thus well above the $14 rate floor for 2013.[22]

The Commission's rule for determining whether a carrier has exceeded the rate comparability benchmark also does not account for the unique circumstances of Frontier's optional service offerings in West Virginia. These calling plan options allow customers to choose the local calling plan that best suits each customer's needs.[23] All customers in West

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20 *See* Frontier Comments at 5.

21 *See* Frontier Comments at 5.

22 *See* Frontier Letter at 1.

23 As noted in the Frontier Comments, the Commission has already recognized that measured rate service plans offer different benefits from flat-rate service plans, and the Commission left open the possibility of setting a separate benchmark for measured service plans. The Commission should recognize that not all measured-rate service plans are offered *on a mandatory basis*, nor are such plans used in the same manner by all customers. *See* Frontier Comments at 9, citing Public Notice at ¶17.

Virginia enjoy a very large local calling area[24] and have the choice of the same four optional calling plans, regardless of whether they live in urban or rural areas. While some customers choose the lowest cost plan, in which all calls are measured (Plan 1), most Frontier customers in West Virginia choose the most expensive calling plan (Plan 4), with all flat-rate service, thereby eliminating charges for individual calls.[25] While the rate for Plan 4 has been above the rate comparability benchmark in the past, in some cases over $3 per month over that benchmark,[26] and is likely to be above the rate comparability benchmark in the future, the Commission should not ignore the fact that Frontier customers voluntarily choose to pay more for Plan 4 in order to receive the benefits of that plan. Just as comparing Frontier's Plan 1 rate to the rate floor does not produce a fair result which is consistent with the intent of the Commission's rules, neither does the comparison of Frontier's Plan 4 rate to the rate comparability benchmark achieve a just or rational outcome. Frontier's local rates in West Virginia are not mandatory. If a customer wishes to pay a lesser rate, he or she always has the option to do so. However, Frontier and its customers should not be penalized because Frontier's rate structure in West Virginia offers

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[24] The local calling area in West Virginia is defined as all wire centers with central offices within 22 air miles of the central office of the customer's home wire center. As a result, most local calling areas in West Virginia are 50 to 60 miles in diameter and provide access to the nearest urban area as a local call. This type of local calling access is very important in a rural state like West Virginia.

[25] *See* Frontier Comments at 7-8.

[26] *See* Frontier Comments at 7. Concerns that Frontier's Plan 4 rates in West Virginia may be above the rate comparability benchmark are neither speculative nor hypothetical. Plan 4 rates exceeded the rate comparability benchmark from 2004 to 2011 when federal subscriber line charges, USF surcharges and E911 fees were factored in. (For example, $29 basic rate plus $6.50 SLC plus $2.23 E911 surcharge equals $37.73. The current rate comparability benchmark is $36.52.) In spite of the fact that Plan 4 rates exceeded the applicable rate comparability benchmark for each year, the West Virginia Public Service Commission found that Plan 4 rates were nevertheless "reasonably comparable to rates charged in urban areas" for the same reasons advanced here: (1) rates are uniform throughout all urban and rural areas in West Virginia; (2) local calling areas are uniformly defined throughout West Virginia; (3) every residential customer in West Virginia has the choice of the same four optional calling plans; and (4) Plan 4 is an optional calling plan that provides flat-rate calling across a very large area, including areas that are billed as long distance calls in other states. See, *General Investigation Regarding Certification of Federal Universal Service Funding for Eligible Telecommunications Carriers in West Virginia*, WV PSC Case Nos. 04-1260-T-GI (Sept. 30, 2004); 05-0714-T-GI (Sept. 29, 2005); 06-0953-T-GI (Sept. 26, 2006); 07-1387-T-GI (Sept. 26, 2007); 08-0618-T-GI (Sept. 16, 2008); 09-0784-T-GI (Sept. 29, 2009); 10-0558-T-GI (Sept. 15, 2010); 11-0818-T-GI (Sept. 19, 2011).

customers the option of choosing the calling plan that gives them the most value based upon their individual calling needs.

B. Enforcement of the Rules Would Disserve the Public Interest In This Case

The Commission's urban rate floor was set at $10 in 2012 and rises to $14 in 2013. The perverse result of enforcing the urban rate floor for each individual rate plan is that Frontier either will be forced to raise the base rate of the plan most favored by Lifeline customers (Plan 1 offered at $7 for fully measured service) or will lose approximately $1.5 million in high-cost support based on the rate floor established for 2013.[27] Neither result is in the public interest. Either all Plan 1 customers, including Lifeline customers, will face higher rates, or all Frontier subscribers will lose the benefit that the lost high-cost support would bring to West Virginia in the form of expanded broadband service.

The better result would be to allow Frontier to use a weighted average of the rates under all four of its calling plans in West Virginia to assess whether it meets the rate floor requirement. This limited waiver of the rules would allow West Virginia customers to retain the option of Plan 1 service while allowing Frontier to have access to much-needed high-cost support in order to further the Commission's broadband goals.

Similarly, Frontier could come into compliance with the rate comparability benchmark by eliminating its Plan 4 service offering. However, this result would disserve the public interest, given that 69% of its West Virginia customers have chosen this plan, willingly paying $7 more a month than they would pay under Plan 3 in order to eliminate measured service, and are paying a higher flat rate for all calls within the very large local calling area. A better option is to allow

[27] Frontier Letter at 2.

Frontier to use a weighted average of the rates for all four calling plans in West Virginia to determine its compliance with the Commission's rate comparability requirement.

Grant of both the requested waivers would better serve the public interest while doing no disservice to the purpose of either rules. The Commission's rate floor seeks to ensure that ratepayers across the country contribute a certain minimum to the support of the local network serving them before they benefit from federal high-cost support. Frontier's local rate plans in West Virginia produce far more than the minimum revenue expected by the Commission for the support of local networks by local ratepayers. Thus, grant of the requested waiver would not undercut the purpose of the rate floor.

The rate comparability benchmark seeks to ensure that ratepayers across the country pay reasonably comparable rates for voice service. Frontier's local rate plans in West Virginia do not require any ratepayer to subscribe to any particular rate plan nor to pay any particular rate. Each customer has access to a calling plan that best fits his or her individual calling needs, including several calling plans with rates below the rate comparability benchmark. Thus, grant of the requested waiver in this case would not undermine the rule's intent. The fact that the great majority of Frontier customers in West Virginia chose a rate that is above the rate comparability benchmark simply means that they perceive great value in this plan.

The customer calling plan choices provided by the West Virginia local calling plans should be encouraged by the Commission, not discouraged by strict application of the subject rules to each individual calling plan. Moreover, grant of the requested waivers would do no harm to the Commission's universal service programs or other recipients of universal service support, since Frontier would receive the same amount of legacy high-cost support in 2013 that it received in 2012. For these reasons, unique circumstances exist to grant the requested waivers, and enforcement of these rules absent the requested waivers would disserve the public interest.

III. THE COMMISSION SHOULD INITIATE A FURTHER NOTICE OF PROPOSED RULEMAKING

If the Commission does not grant Frontier a permanent waiver of rule sections 54.313(a)(10) and 54.318(i) as requested herein, the Commission should grant Frontier in West Virginia a temporary waiver of rule sections 54.313(a)(10) and 54.318(i) pending completion of a rulemaking that will provide an additional method in rule section 54.318(i) for measuring rates for purposes of meeting the rate floor and assessing rate comparability when a carrier's customers may select from optional service plans with varying rate structures. Specifically, Frontier proposes that the Commission initiate a rulemaking to amend its rule section 54.318(i) as follows:

> 54.318 (i) For purposes of this section and the reporting of rates pursuant to paragraphs 313(a) and (h) of this subpart, rates for residential local service provided pursuant to measured or message rate plans, ~~as~~ part of a bundle of services, or pursuant to statewide optional calling plans should be calculated as follows:
>
> (1)******
>
> (2)******
>
> (3) If a carrier offers multiple, uniform local rate plans within a state, and the subscription to any particular rate plan is at the option of the customer, the carrier may report the average monthly local revenue produced by all rates plans. In calculating the average monthly local revenue, qualifying carriers should: (A) determine the sum of all revenue produced by local service monthly recurring charges and local measured service rates over the most recent annual period; (B) divide the result by the average number of residential access lines served by the carrier during the most recent annual period; and (C) divide the result by twelve, the number of months in a year.

These rule changes are necessary in order to avoid perverse results such as the possible loss of support to Frontier in West Virginia described herein. Frontier does not believe that such results were intended by the Commission, nor do they serve the purpose of the rate floor and rate comparability requirements, for the reasons discussed above. In the absence of a permanent waiver, as requested above, these proposed changes to rule section 54.318(i) are necessary to serve the Commission's goals of ensuring encouraging comparable rates between urban and rural areas *and* promoting universal availability of voice and broadband services.

Other changes to the Commission's rules also might address the unique circumstances presented by West Virginia's optional local calling plans. Frontier would support any rule change that would allow it to demonstrate compliance with the rate floor and rate comparability benchmark in the context of its West Virginia optional calling plans. However, Frontier believes that the language proposed here would serve the public interest, minimally affecting existing rules while permitting optional local rate structures that benefit consumers.

IV. CONCLUSION

For the reasons discussed above, the Commission should promptly grant the waivers requested herein or, in the alternative, grant temporary waivers as requested herein while it conducts a rulemaking to modify section 54.318(i) of its Rules to better serve the public interest.

Respectfully submitted,

/s/

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